

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER NATHANIEL
WASHINGTON,

Plaintiff,

v.

RALPH DIAZ, et al.,

Defendants.

No. 2:20-cv-2261 AC P

ORDER

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, seeks relief under 42 U.S.C. § 1983. This order addresses defendants' notice regarding plaintiff's withdrawal of all claims against them (ECF No. 44) as well as plaintiff's motion to strike (ECF No. 48). For the reasons stated below, plaintiff will be given a final opportunity to file an amended complaint, and plaintiff's motion to strike will be denied.

I. BACKGROUND

On December 28, 2021, the court screened plaintiff's complaint and gave him the opportunity to either (1) proceed solely on the First and Eighth Amendment claims against defendants Emerson and Coder or (2) amend the complaint. ECF No. 9 at 4-6, 9-10 (screening order). Plaintiff opted to proceed on the claims against defendants Emerson and Coder, dismissing all other claims and defendants. ECF No. 12 (notice on how to proceed). The

1 complaint was therefore served on Emerson and Coder only, and the docket was updated to
2 reflect the termination of other defendants including T. Meza. ECF Nos. 13, 17.

3 After defendants Emerson and Coder answered, the court responded to a motion from
4 plaintiff seeking in effect to supplement the pleadings by granting leave to amend the complaint.
5 ECF No. 34. A first amended complaint (“FAC”) was docketed on August 5, 2022. ECF No. 40.
6 It presents claims against T. Meza only. *Id.* On August 11, 2022, defendants Emerson and Coder
7 filed a notice of withdrawal of all claims against them, which asks that they be terminated in light
8 of plaintiff’s apparent abandonment of his claims against them. ECF No. 44. In response,
9 plaintiff has filed “objections” to defendants’ notice; the instant motion to strike the notice; and a
10 second amended complaint (“SAC”). ECF Nos. 46, 48, 49. The SAC was not authorized by the
11 court and will be stricken.¹ The First Amended Complaint, ECF No. 40, remains the operative
12 complaint.

13 Defendants have filed a reply in support of their notice of withdrawal (ECF No. 47), and
14 plaintiff has filed an “opposition” to defendants’ reply (ECF No. 50).

15 II. DISCUSSION

16 In their notice of withdrawal, defendants Emerson and Coder argue that because the FAC
17 names only appeals coordinator T. Meza as a defendant, the claims against them have been
18 waived and the court should dismiss them from the action as an administrative matter. *See* ECF
19 No. 44. Defendants are correct that an amended complaint supersedes the original pleading. *See*
20 *Lacey v. Maricopa County*, 693 F.3d 896, 925 (9th Cir. 2012); *see also Rhodes v. Robinson*, 621
21 F.3d 1002, 1005 (9th Cir. 2010). The FAC states no claims against Emerson and Coder despite
22 the court’s previous ruling that the initial complaint had stated cognizable claims against them.

23 Although plaintiff’s abandonment of his claims against Emerson and Coder would indeed
24 require their termination as defendants, it is not clear to the court that plaintiff intends to abandon
25 those claims that have already been served and answered. Plaintiff’s motion to strike, ECF No.
26 48, indicates that plaintiff wishes the court to consider his pleadings in combination. That is not
27

28 ¹ Like the FAC, the SAC contains claims against T. Meza only.

1 permissible, but in light of plaintiff's pro se status he will be granted a final opportunity to file an
 2 amended complaint that includes all of the claims and defendants that he wishes to pursue in this
 3 case. See Fed. R. Civ. P. 8(e); Estelle v. Gamble, 429 U.S. 97, 106 (1976); Haines v. Kerner, 404
 4 U.S. 519, 520 (1972).

5 Plaintiff has not provided any legal basis for striking defendants' notice, under Rule 12(f)
 6 of the Federal Rules of Civil Procedure or otherwise, and that notice made a perfectly valid point.
 7 Accordingly, the motion to strike will be denied. However, instead of terminating defendants
 8 Emerson and Coder at this time, **plaintiff will be directed to file a Second Amended Complaint**
 9 **that includes all claims against all defendants that he wishes to pursue.**

10 Plaintiff is informed that if his Second Amended Complaint does not include the claims
 11 against defendants Emerson and Coder that were previously found adequate for service, those
 12 claims will be deemed voluntarily dismissed and Emerson and Coder will be terminated as
 13 parties. If plaintiff adds additional claims and defendants in an SAC, he should consider the
 14 issues that were addressed in the order screening his original complaint. See ECF No. 9. Also, if
 15 plaintiff fails to file an SAC by the deadline, the undersigned will administratively terminate
 16 Emerson and Coder as defendants and screen the claim against T. Meza presented in the FAC.

17 III. LEAVE TO AMEND

18 If plaintiff chooses to file a second amended complaint, he must demonstrate how the
 19 conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo
 20 v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how
 21 each named defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th
 22 Cir. 1981). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link
 23 or connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy,
 24 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official
 25 participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266,
 26 268 (9th Cir. 1982) (citations omitted).

27 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d
 28 1119, 1125 (9th Cir. 2002). Claims must be set forth in short and plain terms, simply, concisely

and directly. See Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002). Each claim must identify the defendants against which it is brought; individuals against whom no claim is brought should not be named as defendants. The facts intended to support each claim should be set forth under the heading of that claim and should be limited to the facts that are alleged to give rise to liability. Plaintiff is cautioned that detailed narratives defeat the purpose of stating a claim. See McHenry v. Renne, 84 F.3d 1172, 1180 (9th Cir. 1996) (complaints should not contain preambles, introductions, argument, speeches, explanations, stories, griping, vouching, evidence, attempts to negate possible defenses, summaries, and the like). In sum, the court should be able to read and understand plaintiff's pleading within minutes. Id. at 1177.

Plaintiff is also informed that the court cannot refer to a prior pleading in order to make his second amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967) (citations omitted), overruled in part by Lacey, 693 F.3d at 925. **Once plaintiff files a second amended complaint, previous complaints no longer serve any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.**

VI. PLAIN LANGUAGE SUMMARY OF THIS ORDER FOR A PRO SE LITIGANT

The notice of withdrawal that defendants Emerson and Coder filed simply asks the court to formally recognize that your First Amended Complaint names only T. Meza as a defendant and not them. Because any amended complaint must contain **all** claims against **all** defendants, the First Amended Complaint amounts to an abandonment of your claims against Emerson and Coder. Because this may not have been what you meant to do, you are being given an opportunity to file a Second Amended Complaint.

When you file your Second Amended Complaint, it must include **all** the claims you want to pursue against **all** defendants, including the claims that Emerson and Coder have already answered. The court cannot look back at any of the past complaints you have filed and pull the viable claims from them to make a new complaint. It is your responsibility to state all your

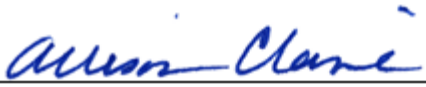
claims in *one* document. If your claims against defendants Emerson and Coder are not included in the amended complaint that you file, that will mean that you have abandoned those claims and Emerson and Coder will be dismissed from this action.

CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. The Second Amended Complaint at ECF No. 49 is STRICKEN.
2. Plaintiff's motion to strike defendant's notice, ECF No. 48, is DENIED.
3. The Clerk of Court shall send plaintiff a copy of the court's Civil Rights Complaint by a Prisoner form. If plaintiff chooses to amend the complaint, it must be filed on this form.
4. Within thirty days from the date of this order, plaintiff shall file a Second Amended Complaint that includes all claims against all defendants. Any claims not included in a Second Amended Complaint may not be pursued. Should plaintiff fail to file a Second Amended Complaint within the time provided, his claims against defendants Emerson and Coder will be deemed abandoned and the undersigned will screen the First Amended Complaint, ECF No. 40.

DATED: October 19, 2022


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE